SUPREME COURT OF THE UNITED STATES.

No. 311.

THE PEOPLE OF THE STATE OF NEW YORK, EX. REL. WILLIAM K. KITCHEN, PLAINTIFF IN ERROR,

VS.

THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

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1 The answer of the judges of the court of appeals of the State of New York in the within writ named, doth certify, under the seal of our said court, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, and send the record whereof mention in said writ is made, with all things touching or in anywise concerning the same, as appears in a certain schedule to this writ annexed, as within it is commanded.

By the court:

[L. S.]

C. H. YOUNG,
Deputy Clerk of the Court of Appeals of the State of New York.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the court of appeals of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you or some of you, between the people of the State of New York, on the relation of William K. Kitchen, against the commissioners of taxes and assessments for the city and county of New York, a manifest error hath happened to the great damage of the said relator, William K. Kitchen, as is said and appears by his complaint: We, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and pro-
3 ceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place before the justices aforesaid, on the first Monday of December, 1866, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct the error what of right, and according to the law and custom of the United States, ought to be done.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, the first Monday of December, in the year one thousand eight hundred and sixty-five.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States for the Southern District of N. Y.

W. M. EVARTS,
Att'y for Plaintiffs in Error.

OCT. 14, '66.

4 Allowed.

S. NELSON,
Justice S. C. U. S.

5 UNITED STATES OF AMERICA, *to wit:*

To the commissioners of taxes and assessments for the city and county of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 1st Monday of December next, pursuant to a writ of error, filed in the clerk's office of the court of appeals of the State of New York, wherein the people of the State of New York, in the relation of William K. Kitchen, are plaintiffs and you are defendants in error, to show cause, if any there be, why the judgment on the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the said S. Ct. of the U. S., this nineteenth day of October, 1866.

S. NELSON,
Justice of the Supreme Court of the United States.
W. M. EVARTS,
Att'y for Pl'ffs in Error.

6 Due and proper service of the above citation and of a copy of the writ of error in this action is hereby admitted.

New York, October 23, 1866.

RICHD. O'GORMAN,
Counsel to the Corporation.

7 Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of William K. Kitchen,
vs.
THE COMMISSIONERS OF TAXES AND ASSESSMENTS for the city and county of New York.
} In error.

Know all men by these presents, that we, William K. Kitchen and James L. Worth, both of the city of New York, are held and firmly bound unto the commissioners of taxes and assessments of the city and county of New York in the sum of one thousand dollars, lawful money of the United States, to be paid to the said the commissioners of taxes and assessments for the city and county of New York, their successors and assigns, for the payment of which we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Whereas, lately, at a court of appeals of the State of New York, in a suit depending in said court between the people of the State of New York, on the relation of William K. Kitchen, plaintiffs,
8 against the commissioners of taxes and assessments for the city and county of New York, defendants, judgment was rendered against the above-named relator, William K. Kitchen, and whereas the said relator, William K. Kitchen, has prosecuted a writ

of error to the Supreme Court of the United States to reverse the judgment in the said suit:

Now, therefore, the condition of this obligation is such that if the above-named William K. Kitchen shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[L. S.] WM. K. KITCHEN.
[L. S.] J. L. WORTH.

Signed, sealed, and delivered in presence of—
GEO. T. BETTS, *U. S. Com.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William K. Kitchen, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and householder within the State of New York, and is worth the sum of two thousand dollars over all his debts and liabilities, and exclusive of prop-
9 erty exempt by law from execution.

WM. K. KITCHEN.

Sworn to before me, this 12th day of October, 1866.
GEORGE T. BETTS, *U. S. Com.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James L. Worth, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within the State of New York, and is worth the sum of two thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

J. L. WORTH.

Sworn to before me, this 12th day of October, 1866.
GEORGE T. BETTS, *U. S. Com.*

OCT. 19, 1866.

Approved: S. NELSON, *Justice Sup. Ct. U. S.*

10 The people of the State of New York to the commissioners of taxes and assessments for the city and county of New York, greeting:

We, being willing, for certain causes, to be certified of the proceedings, decision, and action had by and before you in the matter of the assessment for taxation by you lately made of William K. Kitchen, of the city, county, and State of New York, upon the value, as personal property, of the shares of stock owned by him in the National Park Bank of New York, in the city of New York, do command you that all and singular the said assessment made by you for the year 1866, and all and singular the assessed valuation of such shares by you made in the annual record of the assessed valuation of

real and personal estate, and in the tax and assessment roll, and all documents and papers relating thereto, and your decision and action thereon, and the application, affidavits, and claim of exemption presented to you by the said William K. Kitchen, and all things touching and concerning the said assessment, and all things touching the assessment made by you in the "annual record of the assessed valuation of real and personal estate," of the real estate owned by the said National Park Bank of New York, in the city of New York, assessed for taxation for the year 1866, and all things touching the assessment made by you for taxation of the Firemen's Fund Insurance Company, upon personal estate for the year 1866, with your decision and action thereon, and upon any claim of exemption on the part of said company, by reason of the investment of any portion of its capital in the stocks, bonds, or other securities of the United States,

11 and all things touching the assessment made by you for taxation for assessment upon personal property for the year 1866, of any person whatever whose claim of exemption from taxation by reason of his owning stocks, bonds, and other securities of the United States has been allowed by you, in whole or in part, as fully and entirely as the same remain before you, you send to our supreme court of judicature, at the City Hall, in the city of New York, on the 29th day of June, one thousand eight hundred and sixty-six, together with this writ, to the end that your decision and action inthe matter of said assessment of the said William K. Kitchen may be reviewed and corrected in the merits by our said court, and that we may further cause to be done what of right shall be fit to be done.

Witness Daniel P. Ingraham, esq., justice of our said court, at the City Hall, in the city of New York, on the 25th day of June, one thousand eight hundred and sixty-six.

By the court.

[SEAL.] WM. C. CONNER *Clerk.*

BARLOW & HYATT,
Attorneys for Relator.

Process revenue stamp.

Indorsed: Allowed June 25, 1866.

D. P INGRAHAM, *Justice.*

To the supreme court of the State of New York:

The petition of William K. Kitchen, of the city of New York, states that the petitioner is the owner of one hundred and ten shares of the capital stock of the National Park Bank of New York, in the city of New York, and that he is assessed and taxed upon no other personal property in said city.

That said National Park Bank of New York, in the city of New York, is a banking corporation, created under the act of Congress

entitled "An act to provide a national currency secured by
12 a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, with a capital of two millions of dollars, divided into twenty thousand shares of one hundred dollars each. That the said National Park Bank of New York, in the city of New York, on and prior to the twenty-third day of April, 1866, held and owned, and has ever since held and owned, and still holds and owns, stocks, bonds, and other securities of the United States not subject to taxation by or under State authority to the amount of five millions of dollars and upwards, in which the whole capital of the said bank to the said amount of said two million dollars and all its surplus funds or profits was, and ever since has been, and still is invested; and said bank also holds and owns real estate in the city of New York, in which a portion of the capital of said bank is invested, which has been assessed for the taxes of the year 1866 by the commissioners of taxes and assessment for the city and county of New York, in the "annual record of the assessed valuation of real and personal estate," in the sum of one hundred and five thousand dollars.

That the petitioner, on the twenty-third day of June, 1866, presented to the said commissioners of taxes and assessment for the city and county of New York an application claim of exemption and affidavits, of which the paper hereto annexed, marked A, is a copy.

That, as your petitioner is informed and believes, the said commissioners of taxes and assessments for the city and county of New York have assessed and caused to be inserted in the "annual record of the assessed valuation of real and personal estate" by them made, and in the tax and assessment roll for the year 1866, the sum of ten thousand four hundred and twenty-two 50-100 dollars, as the taxable value of the said shares of stock in the said National Park Bank of New York, in the city of New York, so held by your petitioner, and have decided and determined that he shall be taxed on the amount so assessed as the valuation of his personal property, and said commissioners have thus determined that your petitioner shall be assessed upon the full value of the said shares of stock, deducting therefrom only such sum as is in the same proportion to such value,
as is the assessed value of the real estate owned by the said
13 bank.

That the said commissioners wholly decline and refuse to correct their said assessment of the personal property of the petitioner, and to strike the same from the said annual record of the assessed valuation of real and personal estate, and from the tax and assessment roll; and they also refuse to strike from the sum so assessed to your petitioner as aforesaid, and from the said annual record of the assessed valuation of real and personal estate, and from the tax and assessment roll, so much of the value of the said shares of stock as is in the same proportion to such value as is the amount of the stocks, bonds, and other securities of the United States in which the capital of the said bank is invested to the whole amount of the

capital stock of said bank, but insist that your petitioner is liable to such taxation in the said sum of ten thousand four hundred and twenty-two 50-100 dollars for personal estate, and is bound to pay taxes on the same, notwithstanding the whole of the capital stock of the said bank, and all the surplus funds or profits thereof, is invested in the stocks, bonds, and other securities of the United States, as aforesaid.

The petitioner further states that, as he is advised and believes, he is not liable to be taxed on the value of the said shares of stock, as personal property, in any sum whatever, or, if at all, at a greater rate than is assessed upon any other moneyed capital in the hands of other individuals or corporations in this State.

That the assessment so made by the said commissioners against the petitioner, and entered in the said "annual record of the assessed valuation of real and personal estate" for the year 1866, is at a greater rate than is assessed upon other moneyed capital in the hands of individuals and corporations in the State of New York. That the said commissioners of taxes and assessments, in assessing insurance companies created under the laws of this State, and other individuals, for the taxes of 1866, have assessed such State corporations and other individuals respectively upon the excess only of their capital or personal estate liable to taxation over the amount of stocks, bonds, and other securities of the United States held by them, and have so discriminated in their assessment of said taxes, and in their
14 "annual record of the assessed valuation of real and personal estate" for the year 1866, in favor of the said State corporations and other individuals. That the Firemen's Fund Insurance Company, a corporation created under the laws of the State of New York, with a capital of one hundred and fifty thousand dollars, and located in the first ward of the city of New York, is assessed in the said "annual record of assessed valuation of real and personal estate" of the said commissioners for the taxes of the year 1866 in but the sum of ninety-five thousand dollars, being the amount of the capital of said company, and its taxable surplus profits, after deducting therefrom the whole amount of stocks, bonds, and other securities of the United States held and owned by said company.

Your petitioner therefore prays that a writ of certiorari may be issued and allowed by this court, directed to said commissioners, requiring them to certify and return to this court all and singular their proceedings in the premises, and the documents and papers before them touching or concerning the same, and that the said decision and action of the said commissioners in assessing your petitioner may be reviewed and corrected on the merits by this court, and that the aforesaid errors of said commissioners may be corrected according to law, or that your petitioner may have such other or further relief in the premises as may be meet.

(Signed) BARLOW & HYATT,
WM. K. KITCHEN,
Attorneys for Petitioners.

CITY AND COUNTY OF NEW YORK, *ss.*:

William K. Kitchen, the above-named petitioner, being duly sworn, saith that the foregoing petition is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) WM. K. KITCHEN.

Sworn, this 25th day of June, 1866, before me.

THOMAS ALLISON,
Notary Public, N. Y. City.

15 A.

To the commissioners of taxes and assessments for the city and county of New York:

The application of William K. Kitchen, of the city, county, and State of New York, represents that the applicant is assessed in "the annual record of the assessed valuation of real and personal estate," for the taxes of the year 1866, in the city of New York, upon personal estate in the sum of ten thousand four hundred and twenty-two dollars and fifty cents, as the owner of one hundred and ten shares of the capital stock of the National Park Bank of New York, in the city of New York, being the par value of such stock, after deducting therefrom such sum as is in the same proportion to such value as is the assessed value of the real estate owned by the said bank to the whole amount of the capital stock of said bank. That the said National Park Bank of New York, in the city of New York, is a banking corporation, created under the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, with a capital of two millions of dollars, divided into twenty thousand shares of one hundred dollars each. That the said National Park Bank of New York, in the city of New York, on and prior to the twenty-third day of April, 1866, held and owned, and has ever since held and owned, stocks, bonds, and other securities of the United States not subject to taxation by or under State authority, to the amount of five millions of dollars and upwards, in which the capital of the said bank to the said amount of two millions of dollars (being the whole thereof) and all the surplus funds or profits of said bank was, and ever since has been, and still is, invested; and said bank also owns and holds real estate in the city of New York which has been assessed for the taxes of the year 1866 in the said "annual record of the assessed valuation of real and personal estate."

16 The applicant further states that the assessment so made against him by the said commissioners, and entered in the said "annual record of the assessed valuation of real and personal estate" for the year 1866, is at a greater rate than is assessed upon other moneyed capital in the hands of individuals in the State of New York. That the said commissioners of taxes and assessments,

in assessing insurance corporations created under the laws of this State, and other individuals, for the taxes of the year 1866, have assessed such State corporations and other individuals, respectively, in their said "annual record of the assessed valuation of real and personal estate," upon the excess only of the capital or personal estate of such State corporations and other individuals liable to taxation over the amount of stocks, bonds, and other securities of the United States held by them, and said commissioners have so discriminated in their assessment of said taxes in favor of the said State corporations and other individuals. That the Firemen's Fund Insurance Company, a corporation created under the laws of the State of New York, with a capital of one hundred and fifty thousand dollars, and located in the first ward of the city of New York, is assessed in the said "annual record of the assessed valuation of real and personal estate" of the said commissioners for the year 1866, in but the sum of ninety-five thousand dollars, being the amount of the capital of said company and its taxable surplus property, after deducting from such capital and surplus the whole amount of stocks, bonds, and other securities of the United States held and owned by said company.

The applicant therefore claims:

1. That he is not liable to be assessed or taxed in the valuation of his personal estate for the year 1866 upon any shares of stock of the said National Park Bank of New York, in the city of New York, or upon said shares in any way or manner whatsoever.

2. That the said assessment of said commissioners of taxes and assessments against the applicant, and their entry of the same in "the annual record of the assessed valuation of real and personal estate," are erroneous and illegal and void.

17

(Signed) WM. K. KITCHEN.

Dated New York, June 23, 1866.

CITY AND COUNTY OF NEW YORK, *ss:*

William K. Kitchen, the above-named applicant, being sworn, saith that he believes the facts stated in the above application to be true.

(Signed) WM. K. KITCHEN.

Sworn, this 23d day of June, 1866, before me.

THOMAS ALLISON,
Notary Public, N. Y. City.

CITY AND COUNTY OF NEW YORK, *ss:*

William K. Kitchen, being sworn, saith that he is the president of the National Park Bank of New York, in the city of New York, and that said bank, on the twenty-third day of April, 1866, held and owned, and still holds and owns, stocks, bonds, and other securities of the United States not subject to taxation by or under State authority, to the amount of five millions of dollars and upwards, in

which the capital of said bank and all the surplus funds or profits thereof was, and ever since has been, and still is, invested.

(Signed) WM. K. KITCHEN.

Sworn, this 23d day of June, 1866, before me.

THOMAS ALLISON,
Notary Public, N. Y. City.

18 To the supreme court of the State of New York:

We, the undersigned, commissioners of taxes and assessments for the city and county of New York, pursuant to a writ of certiorari to us directed and hereto annexed, do certify and return:

That we the said commissioners, did, after the 2d May, 1866, and before the 1st day of June, 1866, assess the relator, William K. Kitchen, for the current year on the value of one hundred and ten shares then held by him of the stock of the National Park Bank of New York, a national bank organized under and pursuant to the acts of the Congress of the United States in that behalf made and provided.

That in making the said assessment we valued the said shares respectively at the par value thereof, that is to say, the sum of one hundred dollars for each share, and deducted from such value of each share thus ascertained the sum of $5 25, which sum is in the same proportion to such assessed value of each share as is the assessed value of the real estate of said bank to the whole amount of the capital stock of said bank.

That between the first day of May, 1866, and the first day of June, 1866, we entered upon the books of the record of assessed valuation of personal estate for the year 1866, hereinafter mentioned, the sum of $10,422 50, as the amount for which said relator should be assessed as the holder of said shares.

That in estimating and assessing the value of the said shares, no allowance or deduction was made for or on account of any investment of any portion of the capital stock of the said bank in the stocks, bonds, and securities of the United States.

That insurance companies created under the laws of the State of New York, and doing business in the said city of New York, were respectively assessed for the taxes of the year 1866 upon the balance or residue only of their capital and surplus profits liable to taxation, after making such deductions therefrom as are required by the laws of said State, and after deducting also therefrom the amount
19 of bonds and other securities of the United States declared by the Congress of the United States to be exempt from taxation by or under State or municipal authority.

That the Fireman's Fund Insurance Company, one of such companies doing business in the city of New York, and having a capital of $150,000, was assessed for the taxes of 1866 only upon $95,000, being the balance or residue of the capital and surplus profits liable to taxation of such company after deducting therefrom the amount of bonds and other securities of the United States, declared by the

Congress of the United States to be exempt from taxation by State or under State or municipal authority.

That for the purpose of taxation for the said year for and in respect to their personal estate other than the shares of any bank or banking association held by them, individuals were respectively assessed only to the amount of their said personal estate, after deducting such part thereof as was invested in such bonds and other securities of the United States, as last before specified.

We further certify and return that, as required by law, we keep in our office books called "the annual record of assessed valuation of real and personal estate," and that one of the said books for the current year relates to and contains the valuation of real estate, and the other of them for the current year relates to and contains the valuation of personal estate, and that in said books were entered the assessed valuation of such property within the city and county aforesaid, and that the name of the said relator was entered in the last-mentioned book which relates to personal estate, and also in the last-mentioned book which relates to real estate as liable to be assessed in respect to and on account of said real and personal estate.

That the said books for the current year were kept open for examination and correction from the second Monday of January, 1866, until the first day of May, 1866, and notice thereof was given as required by law.

That the said assessment required by law to be made for and in respect to the shares of stock of bank and banking associations were in the manner aforesaid, and as hereinafter specified, included in the valuation of the personal property of the party who held the said shares respectively at the time of making the said assessment.

That the assessment rolls for the current year, which we are required by the laws of said State to deliver to the supervisors of said city and county of New York, are not yet completed, but will in due time and order be completed and so delivered; and that such assessment rolls are being so prepared, that when so delivered the said shares of the said relator will be included in the valuation of the personal property of said relator in the assessment of taxes at the ward hereinafter mentioned.

That the said shares of stock held by the said relator and for and in respect to which he is assessed as aforesaid, were, and will be in manner herein specified, included in the valuation of the personal property of said relator in the assessment, for the purpose of taxation in the ward in which said bank is located, to wit, in the second ward of the city of New York.

That after having so made the said assessments upon the said relator and the other shareholders of banks and banking associations, for the purpose of taxation of their respective shares for the year 1866, we caused notice thereof to be given to the said relator and other shareholders, and also that the said assessment might be inspected, revised, and corrected at any time before the 30th June, 1866.

That the said relator, since the first of June, 1866, conformably to

such notice, objected to the assessment aforesaid, on the ground that in so estimating and assessing the value of said shares, no allowance or deduction was made for or on account of any investment of any portion of the capital stock of the said bank in the stocks, bonds, and securities of the United States, and requested us to strike off his name and the assessment so made upon him on account of said shares, or to correct the said assessed valuation, or to alter or modify the said assessment of said shares, and that we refused to modify or alter the said assessment in any respect.

21 That the said assessment of the said relator, and our action had in respect thereto, were made and had under and in pursuance of the laws of the State of New York relating to the assessment and collection of taxes in the city and county of New York, and pursuant to the acts of the legislature of said State, found and recorded in chapters 698 and 761 of the laws of said legislature for the year 1866.

In witness whereof we, the said commissioner, have hereto subsubscribed our names and affixed our seals, at the city of New York, this 29th day of June, 1866.

[SEAL.] A. J. WILLIAMSON
[SEAL.] JONA. W. ALLEN.
[SEAL.] JNO. W. BROWN.

Supreme court.

THE PEOPLE, ex rel. ROBERT L. KENNEDY,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS for the city and county of New York.

THE PEOPLE, ex rel. DENNING DUER,
ag't
THE SAME.

THE SAME, ex rel. ABIEL A. LOW,
ag't
THE SAME.

22 THE SAME, ex rel. JOHN E. WILLIAMS,
ag't
THE SAME.

THE SAME, ex rel. W. K. KITCHEN,
ag't
THE SAME.

THE SAME, ex rel. DAVID DOWS,
ag't
THE SAME.

THE SAME, ex rel. JOSEPH W. GREEN and others,
ag't
THE SAME.

THE SAME, ex rel. PETER M. BRYSON and others,
ag't
THE SAME.

General term, June 29, 1866.

Present: Barnard, Ingraham, Sutherland, justices.

On reading and filing the petition of the several relators
23 with the certioraris and also returns of the commissioners of taxes and assessments for the city and county of New York, to each of the certioraris issued in the above cases respectively, and after hearing counsel for the said relators and for the said commissioners of taxes and assessments, it is adjudged that the relators are not entitled to the relief demanded, and it is ordered that the action and decision of the commissioners in the said cases, and each of them, be and the same are hereby, confirmed.

(A copy.)

WM. C. CONNER, *Clerk.*

At a general term of the supreme court of the State of New York, at the city of New York, on the 29th day of June, 1866.

Present: Hon. Geo. G. Barnard, P. J., Hon. Josiah Sutherland, Hon. Thomas W. Clerke, justices.

THE PEOPLE, ex rel. W. K. KITCHEN,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS for the city and county of New York.

This matter having been heard upon the certiorari and return thereto, and counsel for the relator and for said commissioners having been heard:

On motion of Richard O'Gorman, of counsel for said commissioners, it is ordered, adjudged and decreed that the proceedings and determinations of the said commissioners in the assessment of the said relator be, and the same are hereby affirmed, and in all respects held valid.

And it is further adjudged that the said commissioners recover from the above-named relator their costs and disbursements, to be taxed by the clerk of this court.

24 And thereupon the costs of the said commissioners, respondents as aforesaid, are adjusted and taxed at the sum of dollars by the clerk of said court.

(A copy.)

WM. C. CONNER, *Clerk.*

N. Y. supreme court.

THE PEOPLE, ex rel. WILLIAM K. KITCHEN,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS for the city and county of New York.

Please take notice that the relator, W. K. Kitchen, appeals to the court of appeals from the judgment, order, or decree rendered in the above-entitled proceeding, by the general term of the supreme court, in the first judicial district in the State of New York, on the 29th day of June, 1866, by which judgment, order, or decree certain proceedings of the above-named respondents touching an assessment upon the property of the above-named relator were affirmed and held valid, and costs were awarded to said respondents; and said relator appeals from every part of said judgment, order, or decree.

Dated New York, Sept. 4, 1866.

BARLOW & HYATT.
Attorneys for Relator.

To RICH'D O'GORMAN, Esq., *of Counsel for Respondents.*
To WM. C. CONNER, Esq., *Clerk of Court.*

STATE OF NEW YORK, *City and County of New York, ss:*

I, William C. Conner, clerk of the supreme court of said State, in and for said city and county, do hereby certify that the pre-
25 ceding consists of certified copies of the notice of appeal, the order appealed from, and the papers on which the court below acted in making such order.

In witness whereof I have hereunto subscribed my name and affixed my official seal, this day of , 1866.

[L. S.] WM. C. CONNER, *Clerk.*

In the court of appeals.

THE PEOPLE, ex rel. WILLIAM K. KITCHEN,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS, &c.

CITY AND COUNTY OF NEW YORK, *ss:*

Francis C. Barlow, being duly sworn, says that he is one of the attorneys for the relator in this action, and that no opinion was given by the general term of the supreme court upon the rendition of judgment therein.

FRANCIS C. BARLOW.

Sworn this 17th day of Sept., 1866, before me.

MIRON WINSLOW,
Notary Public, New York.

26 At a term of the court of appeals of the State of New York, held at the capitol, in the city of Albany, on the sixth day of October, 1866.

Present: Hon. Henry E. Davies, chief judge, presiding.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of William K. Kitchen, appellants,
agt.
THE COMMISSIONERS OF TAXES AND ASSESSMENTS for the city and county of New York, respondents.

The appeal in this cause having been argued by Mr. William M. Evarts, of counsel for the relator, William K. Kitchen, appellant, and by Mr. Charles O'Conor and Mr. Richard O'Gorman, of counsel for the defendants, respondents, and due deliberation being had thereon it is ordered that the judgment of the supreme court appealed from be, and the same is hereby, in all things affirmed, with costs to the defendants, respondents.

And the relator, William K. Kitchen, having claimed exemption from the taxation mentioned in the record in this cause, under and by virtue of the eighth section of article 1 of the Constitution of the United States, and also under and by virtue of the second sec-
27 tion of the act of Congress, entitled "An act to authorize the issue of United States notes and for the redemption or funding thereof, and for funding the floating debt of the United States," approved February 25, 1862, and also under and by virtue of an act of Congress, entitled "An act supplementary to an act entitled 'An act to provide ways and means for the support of the government,'" approved March 3, 1863; and also by virtue of the provisions of an act of Congress, entitled "An act to provide a national currency secured by a pledge of the United States stocks, and to provide for the circulation and redemption thereof," approved February 25, 1863; and also by virtue of the provisions of an act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864; and the several acts of Congress additional to and amendatory thereof, on the ground that the capital stock of said bank in that respect mentioned in said record is invested in the public debt of the United States; also on the ground that said tax is prohibited by said section 8, article 1, of the Constitution of the United States; also on the ground that the said tax is prohibited by the provisions of the several acts of Congress before mentioned; also on the ground that said tax is prohibited by the Constitution and laws of the United States; and also on the ground that said tax is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State of New
28 York; and on the ground that the assessment in the record complained of was not made in conformity with the laws of the State of New York, nor with the acts of Congress before mentioned.

And the validity of the authority claimed by said respondents under the provisions of an act of the legislature of the State of New York entitled "An act authorizing the taxation of stockholders of bank and the surplus funds of savings banks," passed April 23, 1866, to impose the tax mentioned in said record being drawn in question, i is certified that the judgment of this court is against the said relator William K. Kitchen, the appellant, and is against the exception, right, privilege, or exemption claimed by him under and by virtue of said provisions of the Constitution of the United States and the several acts of Congress before referred to, and in favor of the validity of such statute of New York State, and the construction of the 8th section of article 1 of the Constitution of the United States and of the several acts of Congress before mentioned being drawn in question; it is further certified that the judgment of this court is against the right, privilege, exception, or exemption specially claimed by said relator, William K. Kitchen, the appellant, under said section of the Constitution of the United States and the several acts of Congress before mentioned.

(A copy.)

C. H. YOUNG,

Deputy Clerk of the Court of Appeals of the State of New York.

Filed October 6th, 1866.

29 Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of William K. Kitchen, plaintiffs in error,

against

THE COMMISSIONERS OF TAXES AND ASSESSMENTS for the city and county of New York, defendants in error.

Of the term of December, in the year one thousand eight hundred and sixty-six.

Afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States, at Washington, in the District of Columbia, came the people of the State of New York, on the relation of William K. Kitchen, by William M. Evarts, their attorney, and say that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, is manifest error in this, to wit, that the relator, William K. Kitchen, is entitled to exemption from the taxation mentioned in the record in this cause under and by virtue of the eighth section of article 1 of the
30 Constitution of the United States, and also under and by virtue of the second section of the act of Congress, entitled "An act to authorize the issue of United States notes and for the redemption and funding thereof, and for funding the floating debt of the United States," approved February 25, 1862; and also under and by virtue of an act of Congress, entitled "An act supplementary to an act en-

titled 'An act to provide ways and ways for the support of the government,'" approved March 3, 1863; and also by virtue of the provisions of an act of Congress, entitled "An act to provide a national currency, secured by a pledge of the United States stocks, and to provide for the circulation and redemption thereof," approved February 25, 1863; and also by virtue of the provisions of an act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864; and the several acts of Congress additional to and amendatory thereof, on the ground that the capital stock of said bank, in that respect mentioned in said record, is invested in the public debt of the United States; also on the ground that said tax is prohibited by section eighth, article 1, of the Constitution of the United States; also on the ground that the said tax is prohibited by the provisions of the several acts of Congress before mentioned; also on the ground that said tax is prohibited by the Constitution and laws of the United States; and also on the ground that said tax is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State of New York; and also on the ground that the assessment in the record complained of was not made in conformity with the laws of the State of New York, nor with the acts of Congress before mentioned; and also on the ground that the said commissioners of taxes and assessments had no right or authority under the provisions of an act of the legislature of the State of New York, entitled "An act authorizing the taxation of stockholders of banks and the surplus funds of savings banks," passed April 23, 1866, to impose the tax mentioned in said record.

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There is also error in this, to wit, that by the record aforesaid it appears that judgment aforesaid, in form aforesaid, was given for the said commissioners of taxes and assessments for the city and county of New York against the said relator, William K. Kitchen, whereas by the law of the land the said judgment ought to have been given for the said relator, William K. Kitchen, against the said commissioners of taxes and assessments for the city and county of New York. And that the said the people of the State of New York, on the relation of William K. Kitchen, pray that the judgment aforesaid for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that the relator, William K. Kitchen, may be restored to all things which he hath lost by occasion of the said judgment, &c.

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WILLIAM M. EVARTS,
Attorney for Pl'ffs in Error.

Due service of a copy of the within admitted this 23 day of Nov., 1866.

RICH'D O'GORMAN,
Counsel to the Corp'n.

Filed 27 November, 1866.

33 *Joinder in error.*

[Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of William K. Kitchen, plaintiffs in error,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS for the city and county of New York, defendants in error.

Of the term of December, in the year one thousand eight hundred and sixty-six.

And hereupon afterwards, to wit, on the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-six, before the justices of the Supreme Court of the United States, at Washington, in the District of Columbia, come the commissioners of taxes and assessments for the city and county of New York, by Richard O'Gorman, their attorney, and say that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and he prays that the court now here may proceed to examine as well the record and proceedings aforesaid as the
34 matters above assigned for error; and that the judgment aforesaid given may be in all things affirmed, &c.

RICHARD O'GORMAN,
Attorney for Defendants in Error.

Filed 28th November, 1866.

Supreme Court

OF THE UNITED STATES.

THE PEOPLE OF THE STATE OF NEW YORK,
EX. REL. DENNING DUER,

Plaintiffs in Error.

vs.

THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK.

Defendants in Error.

No. 301, AND ELEVEN OTHER CASES.

ARGUMENT OF MR. O'CONOR.

NEW YORK:
EDMUND JONES & CO., PRINTERS AND STATIONERS,
No. 26 John Street.
1866.

Supreme Court of the United States.

DECEMBER TERM, 1866.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* DENNING DUER,
Plaintiff in Error,

agst.

THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK,
Defendants in Error.

NO. 301, AND ELEVEN OTHER CASES.

ARGUMENT OF MR. O'CONOR.

I. The taxation of *shares* is objected to as identical in effect with direct taxation upon the bank's capital. And it is argued that because it is identical in effect with direct taxation upon the bank's capital it must be unlawful.

If taxation on shares were identical in *all* its effects and consequences with direct taxation upon the bank's capital, perhaps we might admit that whenever it would

be unlawful to tax the capital it would also, in every such case, be unlawful to tax the shares.

But who can maintain that taxation on shares is, in *all* respects, tantamount to taxation on the bank's capital? A tax on shares never can touch the bank itself.

It never can touch one cent of the bank's capital or the bank's property. It never can touch anything except some amount which has been distinctly assigned to the shareholder, and has thereby become the individual property of the shareholder.

The shareholder never can receive anything from the bank except—

1st. "Semi-annually, each year, * a dividend * of the net profits." (*National Bank Law, sec.* 33; 13 *Statutes at Large*, 109.)

2d. The remainder of the *proceeds* of a sale of its assets after its dissolution. (*Ib., sec.* 50.)

Thus we see that by the explicit directions of the National Banking Law the shareholders are forever excluded from any property, possession, power, or possibility of ownership in any specific thing belonging to the bank in its associated or corporate capacity.

Not only are the shareholders without a present interest in the property of the bank, but they have not even the possibility of a future ownership of anything that belongs to it except as a purchaser from the bank or from the public officer who may wind it up. A shareholder never can, by any human possibility, touch a single item of its property.

How, then, can it be said that taxation of the shares

and taxation of the bank's capital are necessarily and to all intents and purposes one and the same thing?

II. Another view of the matter is quite obvious.

The argument that taxing the capital and taxing the shares is one and the same thing is quite inapposite and delusive. It is an argument that does not drink at the fountain, but merely sips at the rivulet.

No *law* forbids taxation of the capital. The law in question is one that forbids taxation of United States securities. Judicial decisions have indeed pronounced that when, by its form and effect, a tax law lays its rate upon the United States securities, the prohibition is violated, even though the law calls it taxing the capital, and even though, in fact, it be a tax upon the capital, a specified component part of that capital being invested in United States securities; for that is, in form and in substance, *pro tanto*, a tax on these securities. But it is drawing the argument far away from the question in hand when we talk in this case about prohibitions upon taxing capital. There is no such prohibition.

The *law* prohibits taxing United States securities—it prohibits nothing else.

And the question before the Court is—Does this assessment impose a tax on United States securities?

When we find that the tax is imposed on one who does not own the securities, who never can, in any event, receive one cent of the principal or one cent of the interest payable upon the securities, one would suppose that the question was answered in the negative.

But the answer may be carried further. The tax is

imposed on one whose power, right, capacity, or chance of ever deriving, even indirectly, the remotest benefit from the United States securities held by the bank is a mere future possibility dependent upon the contingencies of a very hazardous traffic.

1st. Unless net profits on the business of the bank shall be realized, the shareholder can never derive a cent of benefit in the way of annual dividends.

2d. Unless the business of the bank should be prosperous, not a cent will ever come to the shareholder from the *proceeds* of the bank's capital on its winding up.

And yet we are told that taxing his *shares*—i. e. taxing the estimated value of his chances of realizing profit from the successful conduct and successful issue of the bank's business—is a tax upon each item of property that the bank may own!!

III. Something is sought to be gained by assuming that the *change* from the disallowed practice of taxing the *capital* to the scheme of taxing the *shares* is a *device* to evade a prohibition. Something like an unfair *evasion* is imputed.

To evade the letter of a prohibition and commit the very offense the letter was intended to prevent is odious. But to avoid the commission of a prohibited act is not so. The law with which we are dealing forbids taxation upon the owner of United States securities. Former State legislatures directly violated that law, and their acts were annulled by the judiciary.

The act now under consideration does not violate the law; but, say the objectors, the present law sub-

stantially accomplishes the very result aimed at by the previous void laws.

Agreed. The former laws really sought a lawful and proper end. They merely aimed at taxing the profits of a banking business which ought to have contributed to the expenses of the local government. But they attempted to accomplish this lawful and proper object by a forbidden means. They laid a tax on United States securities; this the constitution and the acts of Congress forbade. Hence the invalidity of the tax: not because it was wrong to tax the profits; not because it was wrong to do the very thing aimed at; but because the end was sought by improper means.

The appropriate remedy for such a difficulty is to devise a *means* not prohibited.

Means of accomplishing a proper and desirable end may be prohibited expressly or by necessary implication. There may be an unlawful way of doing a lawful thing.

So much for the argument that the State act now under consideration is an evasion of certain judicial decisions. It is quite the contrary; it is obedience to the *law*, pursuant to instructions for that purpose contained in those very judicial decisions.

The charge of evasion is often made, and is very often supported by some color of justice, when, in substance, the charge is groundless.

"Admitting that a law is not made to be evaded, the question in each particular case is simply, whether the act is or is not forbidden by the law properly interpreted. If not, the mere fact that the act was done

to evade the law is immaterial." (*Lindley Introd. to Jurispr., App., p.* 31, *Law Lib. N. S., vol.* 70. *A. D.* 1853.)

The remarks of Sir William Follett, *arguendo*, are very apposite:

"A fraudulent evasion of an act of Parliament is an infringement of the act; but a contrivance to avoid the inconveniences, to which a class of men are exposed by the penal provisions of an act of Parliament is not unlawful (p. 481). * * It is said that this is an attempt on the part of the defendants to *evade* the act of Parliament. Their object certainly is so to conduct their business as to *avoid the violation* of the act of Parliament if they can; and if to do that be to evade the act, it may be admitted that this is an attempt at evasion (p. 479). * * If by *evasion* is to be understood the *avoiding* the provisions of an act of Parliament so as not to come within their scope, this is a proceeding which a court of equity has no more power than a court of law to prevent." (*Follett arg.* 2 *Keen R.*, 478, 479, 481.)

UNITED STATES *vs.* BREED, 1 SUMNER, 159, 165.

[Crushed loaf-sugar not being loaf-sugar (sugar in loaves) in a commercial sense, the duty on loaf-sugar is not imposed on or evaded by an importation of crushed loaf-sugar.]

Story, J.—"It is true that a mere change of form will not authorize a party to evade a law or escape from its penalties. But this is a principle that requires qualification and examination. * It is assuming the

whole question to say that the change of form is an evasion of the act—much more, that it is a fraudulent evasion. If the Legislature has made the form, or descriptive appellation, the basis of the discriminating duty, then the change of form to meet the discrimination is no evasion and no fraud. The act gives the election to the party and he has a right to make it. *He does that which the law allows in the very manner and with the very design it allows.*" * * * "To constitute an evasion, * * which shall be deemed, in point of law, a fraudulent evasion, it is not sufficient that the party introduces another article perfectly lawful, which defeats the policy contemplated by the act, or which supersedes or diminishes the use of the article taxed by the act. There must be substantially an introduction of the very thing taxed, under a false denomination or cover, with the intent to evade or defraud."

IV. The principle that whilst the Government's fiscal agent may not be taxed, those who derive a profit from that fiscal agent's business may be taxed, exhibits an important and substantial difference in practice.

1. The Government agent is kept free from State interference with its action, except in such defined respect as Congress has seen fit distinctly to permit.

2. The tax upon those who profit by its business might, indeed, prevent its shares from being a desirable investment, and thereby prevent its shares from being taken or held. This possibility may be very remote and improbable. If these fiscal agents should

prove so feeble and rickety in their constitution that the shareholders could not derive from their business a sufficient profit to endure the same share of the public burdens that bank capital under the State system sustained, the Government could derive little benefit from their agency. Besides, it is for Congress, as the constitutional judge of what may be politic, to determine whether the expulsion of national bank shares from the stock market would be a result of permitting them to be taxed. The mere f ct that, logically, it is a recognizable possibility, is not a reason for pronouncing it a practical fact, or for legislating on that assumption.

V. Another argument that is cast in our path as a stumbling-block is, that to taxation upon shares in the shareholder's hands there might be added taxation upon capital in the hands of the corporation, and this would be *double* taxation.

For the sake of the argument, let us suppose this to be true: what office does the proposition perform except to show that a wise and just legislator should neither impose or permit such double taxation?

It is not permitted by the act of Congress now under consideration; it is not attempted by the State.

This notion of double taxation might be run out to the most extravagant lengths. A tax upon a man's income and a tax upon every article he consumes or uses may be called, and is, double taxation. Add to this

stamp taxes on his receipts and expenditures, and you have treble taxation. The parallel might be extended, and thus the same thing in substance might be many times taxed. But does this prove that any one of the taxes which might be thus duplicated is forbid len by any controlling law or principle, or is in any wise improper?

VI. If there be *any* difference between the property of a corporation and the property of one who has bought a share in it, that is enough to sanction the distinction that has been drawn in the legislation now under review.

Who can say that there is *no* difference?

Attempts are made to compare the relation of a shareholder to the bank corporation with that of trustee and *cestui que trust*, or of landlord and tenant.

There is no such parallel.

Primarily, corporations are created for the advancement of some great public interest. Special privileges cannot be granted consistently with sound governmental morality, unless to attain some such end. Indeed, Congress has no constitutional power to create a corporation except as an organ or instrument of the government. The profit allowed to accrue to individual shareholders is an incident to promote the great end. Consequently the true, the real *cestui que trust* is the government or that public object for which the corporation was created. In a limited and qualified way a shareholder has the rights and remedies of a *cestui que trust* against the directors of the corporation. But that *he* is the true owner of the whole corporation and its property, while the directors are but his agents

and servants bound to his interest, as substantially their whole duty, cannot be affirmed. Yet in equity jurisprudence, in which these phrases trustee and *cestui que trust* alone have place, such is the relation between trustee and *cestui que trust*.

It is still more difficult to discover any parallel between the relation of directors in a corporation to the shareholders and the relation between landlord and tenant.

We have seen that, by the express words of the National Bank Law, the shareholder is perpetually and forever excluded and cut off from receiving into his hands by any human possibility the property of the corporation, or any part of it.

There is precisely similar legislation in New York, and, it is presumed, in all the States, as to their corporations.

But I will not repose myself on the mere words of a positive law. Let us see whether in principle and according to the fundamental doctrines of the common law there be not a fixed and permanent separation of corporate property from the interest of the shareholders. Thus speaks *Kent*, the great American commentator, in his *vol.* 2, *p.* 307, side paging:

"According to the old settled law of the land, where there is no special statute provision to the contrary, upon the civil death of a corporation all its real estate remaining unsold reverts back to the original grantor and his heirs. The debts due to and from the corporation are all extinguished. Neither the stockholders nor the directors or trustees of the corporation can recover those debts,

or be charged with them, in their natural capacity. All the personal estate of the corporation rests in the people, as succeeding to the right and prerogative of the crown at common law."

This ancient principle is affirmed or recognized in the amplest manner in the books of our law. (*Co. Litt.*, 13*b*.; *Litt.*, *lib.* 1, *ch.* 1, § 4.)

"Dissolution is the civil death of the corporation, and in this case their lands and tenements shall revert to the person or his heirs who granted them to the corporation. * * The debts of a corporation either to or from it are totally extinguished by its dissolution, so that the members thereof cannot recover or be charged with them in their natural capacities." (*Blackstone's Comm.*, 484 *side-paging*; *Fox vs. Horah*, 1 *Iredell Eq.*, 358; 2 *Harrington*, 8, 13.)

"On the dissolution of a corporation the debts due to and from it are extinguished, and it is not in the power of the legislature by renewing the charter to revive the liabilities of the corporation (*Commercial Bank vs. Lockwood*, 2 *Harrington*, 8; *Port Gibson v. Moore*, 13 *Smedes & Marshall*, 157.) The personal property vests in the State, and its real estate reverts to its grantor and his heirs (*White v. Campbell*, 5 *Humph.*, 38)." (*Sharswood's note* 21 *to* 1 *Bl. Com.*, 484 *side-paging*.)

"If lands are given to a corporation which is afterwards dissolved, the donor shall have the lands again; for the law annexes such a condition in every grant to a body politic." (*Bacon Abr. Corp. G.*, *p.* 483, *Bouvier's ed.*; *Angell & Ames Corp.*, 8*th ed.*, *secs.* 195, 196.)

"Corporations have a fee-simple for the purpose of

alienation, but they have only a determinable fee for the purpose of enjoyment. On the dissolution of the corporation the reverter is to the original grantor or his heirs; but the grantor will be excluded by the alienation in fee, and in that way the corporation may defeat the possibility of a reverter (2 *Kent*, 282; 5 *Denio*, 389; 1 *Comst.*, 509)". (*Nicoll* vs. *N. Y. & Erie Railroad Co.*, 2 *Kern*, 129.)

I admit that the application of this principle is generally prevented by some positive statutes. In respect to the national banks it is prevented. But we have seen how it is prevented; it is prevented by express provisions, which, like the ancient principle itself, preclude the shareholder from ever acquiring a right or title to any specific thing which belonged to the corporation or formed a part of its capital, except as any stranger might, *i. e.*, by purchase.

Where, then, is the foothold in common law or statute law, or in any fair line of reasoning, for the proposition that a shareholder's interest in his shares is, as property, the very same thing as the bank's interest in its capital?

The obvious distinction between the property or interest of a shareholder in a corporation and the property or interest of the corporation itself in the capital is declared in a multitude of authorities. A few, by way of instances, are referred to:

In the case of *Rex vs. Hull Dock Co.*, 1 *Term Reports*, 219, it was decided that lands purchased by that company and converted into a dock were ratable to the poor as real estate notwithstanding a clause in the act of Parliament that the *shares* of the proprietors should

be considered as personal property. ABINGER, C. B.: "That was a rate on the property in the hands of the company, not on the share of any individual proprietor." (*Bradley vs. Holdsworth*, 3 *Meeson & Welsby*, 423.)

"The dissolution of the corporation * * * reduced the interests of the stockholders to mere equitable rights to their several distributive shares of the corporate funds, * * * such shares not being stock, but choses in action which are not negotiable." (*James vs. Woodruff*, 10 *Paige*, 546, 548.)

"It is argued that the debt was fairly due from the defendant company, and that the intention in executing the note [to the bank] and deed of trust [to a third person] was to secure the *stockholders* in that amount, and not the institution. This argument is a fallacy. We cannot recognize the existence of the stockholders of a defunct corporation, and we cannot in this case go behind the note and deed to hunt for a different payee and a different *cestui que trust* from that mentioned in the instrument." (*White vs. Campbell*, 5 *Humphrey R.*, 39.)

"If a corporation owns land as a part of its property, and its capital stock be divided into shares which are held by individuals, such lands would be the real estate of the artificial person—the corporate body—while the interest of the individual stockholders in the same would, ordinarily, be personal." (*Washburn, Real Prop.* (*second edition*), *p.* 8, *sec.* 13.)

The continental jurists of Europe, speaking in the light of the civil law, recognize this distinction as fully as the English lawyers and the sages of our own law. In 4 *Goujet & Merger's Dictionary of Commercial Law*

(*Dictionnaire du Droit Commercial*), *p.* 625, *sec.* 30, is the following sentence, sustained by numerous references to the Civil Code and to commentators thereon :

"Pendant la durée de la Société, les associés n'ont qu'une espérance ; la propriété réside dans la société c'est elle qui possède exclusivement ; il n'y a pour les associés qu'un droit incorporiel et mobilier."

DECEMBER, 1866.